INSURANCE—INTEREST OF BENEFICIARY—PRIOR DEATH.—One Julia Dunn held an accident policy in defendant company, naming as beneficiary her sister Mary, and in case of her prior death, the legal representatives of the insured. Both insured and her sister perished in the "Slocum disaster" off New York in 1904. The administrator of the insured brings suit on the policy. *Held,* that he could recover. *Dunn* v. *New Amsterdam Casualty Co.* (1910), 126 N. Y. Supp. 229.

In cases of common disaster there is no presumption of survivorship. *In re Willbor,* 20 R. I. 126, 51 L. R. A. 863. The law presumes that a condition once established remains until a change is actually shown. If the beneficiary first named in the above policy took a vested interest, it is incumbent upon the plaintiff to show a divesting, by affirmatively showing her prior death; on the other hand if the interest was contingent the burden is upon the representatives of the sister to show a vesting by showing she did not suffer a prior death. In other words the one upon whom the burden falls loses, there being no presumption, and no actual proof either way. The interest of the beneficiary in the policy of a mutual company or an "old line" company is vested in the absence of any clause giving the insured the right to change the beneficiary, 4 COOLEY, BRIEFS ON INS., 3755-3760. The policy in the present case did not reserve the right to change. In *U. S. Casualty Co.* v. *Kacer,* 169 Mo. 301, 58 L. R. A. 436, 92 Am. St. Rep. 641, the court lays down the doctrine that the interest of the beneficiary in a policy which read, "if surviving" was a vested interest, reasoning that the words "if surviving" had no effect on the interest created so long as the beneficiary lived, but merely operated to control the distribution in the event of a prior death. The court in the principal case is "unable to follow this reasoning." Looking at the face of the contract the conclusion in the Missouri case would seem to be the logical one. There is a definite statement sufficient to create a vested interest and which has uniformly been so held, "Indemnity shall be paid to the beneficiary named in the stub." Up to this point the meaning is clear, the interest is vested. Then follows a condition under which the interest will be divested, viz., prior death. As a matter of logic this seems clear enough but there arises a practical objection to this interpretation. It appears from the instrument itself that the insured wanted her own representative to have the proceeds, if her sister could not get them. The intention appears that the sister's representatives should not be benefited in preference to the insured's. True the intention of the insured can have no effect contrary to that which the law has given to the contract actually made. But when the actual legal effect is doubtful, a construction which harmonizes with the intention of the insured would seem equitable.

INSURANCE—STATEMENTS MADE BY APPLICANT—HOW CONSTRUED.—Plaintiff, as beneficiary, sued on an accident and health insurance policy issued by defendant company to one Wright, who in his written application for the policy, had been called upon to answer various interrogatories. These questions and answers preceded a stipulation that "if any of the statements made herein are not true, full and complete, all rights to the benefits named